EXHIBIT F

PART 1

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TINA LINDQUIST,)

Plaintiff,)

-vs-) No. 04-249E

HEIM, L.P.)

Defendant.)

The videotaped deposition of MR. GARY HUTTER, called for examination pursuant to Notice and the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before DEANNA AMORE, a notary public within and for the County of Cook and State of Illinois, at 33 North LaSalle Street, Chicago, Illinois, on the 12th day of April, 2006, at the hour of 8:14 a.m.

CSR No.: 084-0003999

APPEARANCES:

DALLAS W. HARTMAN, P.C., by,
MR. DALLAS W. HARTMAN
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(724) 652-4081
Representing the Plaintiff;

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C., by,
MR. PAUL R. ROBINSON
U.S. Steel Tower, Suite 4850
600 Grant Street
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(412) 261-6600
Representing the Defendant.

ALSO PRESENT:

Karolina Tesarski, Videographer

I N D E X

E X H I B I T S

THE VIDEOGRAPHER: My name is Karolina Tesarski, legal video specialist with McCorkle Court Reporters located at 200 North LaSalle Street, Suite 300 Chicago, Illinois 60601. I am the camera operator on April 12, 2006, for the videotaping of the deposition of Gary Hutter being taken at 33 North LaSalle, Chicago, Illinois at the time of 8:14 a.m. in the matter of Tina Lindquist, plaintiff, versus Heim L.P., defendant, filed in the United States District Court, Western District of Pennsylvania, Case No. 04-249E.

Will counsel please identify themselves for the record beginning with the plaintiff's counsel?

MR. HARTMAN: Yes, my name is Dallas Hartman. I represent the plaintiff, Tina Lindquist.

MR. ROBINSON: Good morning, my name is Paul Robinson. I represent Heim, L.P.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in the witness?

THE COURT REPORTER: Deanna Amore.

(Witness sworn.)

GARY HUTTER,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HARTMAN:

Q. For the record would you please state your name?

A. My name is Gary M. Hutter. The last name is spelled H-u-t-t-e-r.

Q. Mr. Hutter, will you give us your current business address?

A. My office is at 4228 Commercial Way in Glenview, Illinois. The zip code there is 60025.

Q. And how long have you been at that address?

A. Oh, probably about seven years.

Q. Do you share office space with anyone at that address?

A. Yes, occasionally.

Q. And who do you share space with?

A. Different people. Currently there is a William Switalski who uses part of the office.

Q. Is that the same William Switalski who is an expert in this case?

A. I believe so, yes.

Q. Do you know how Mr. Switalski became involved in this case involving Ms. Lindquist?

A. Probably was a referral from me.
Q. What was the purpose of the referral from you to Mr. Switalski for involvement in this case?
A. I think in the course of my involvement in this case, there were discussions about some of the publications and philosophies and involvement that the plaintiff's expert has been associated with in the past on things like presses, press brakes, foot controls, the safety philosophy that he has been involved with. And I think Mr. Switalski had a lot of familiarity with that. There was another gentleman also who had a lot of familiarity with that that I think I may have also mentioned.
Q. Who was that?
A. Peter Barroso.
Q. Mr. Barroso?
A. Uh-huh.
Q. Was there a dividing up of the responsibilities between you and Mr. Switalski in formulating opinions in this case?
A. I never got a document or mandate that said we are going divide it along, exactly along some lines. I know that there is a third defense expert in this case, Dennis Cloutier.

I think Bill and I have opinions about some of the same kinds of things, maybe we are approaching it from different experiences or different basis. I actually looked at the machine in person. Mr. Switalski didn't. Mr. Switalski, I think, was involved in some of the testing and evaluations that were part of some of the publications that Professor Barnett generated and had some more intimate familiarity with that. So he might have more deeper, stronger opinions about some of those things than I would.

Dennis, Mr. Cloutier, he is on a committee I am involved with; and I know he has worked for many years for manufacturers of metal working tools and had perhaps more field experience in servicing their equipment. So there might be differences along those lines.

Q. Well, I would like to know what your -- why it is that you recommended Mr. Switalski as necessary to be involved in this case?

A. I don't know that I recommend --

MR. ROBINSON: Excuse me one second.

Object to the form of the question. And I believe that you just asked that question and

received an answer.

Please disregard for your purposes, Dr. Hutter, my objections. Please go ahead and answer.

THE WITNESS: I didn't recommend that he be involved. I think there was a question of maybe something along the lines of do you know anyone who is familiar with some of the writings of Ralph Barnett, are you familiar with anyone who was involved in some of this testing that might have gone on used in the generations of these safety philosophies, are you aware of anyone who would have been involved with Professor Barnett in prior cases having to do with foot controls.

Professor Barnett has defended many of the -- or at least Linemaster, for example, the manufacturer of foot controls. I know he has defended many manufacturers of presses and press brakes. But I think Mr. Switalski, having worked closer to Ralph Barnett on some of these matters, had more information in that regard, likewise Peter Barroso did too.

BY MR. HARTMAN:

Q. You used the term presses and press brakes. Would you distinguish for us what the

difference is between a press and a press brake?

A. Well, I really think the distinguishing is mechanical presses and a press brake. Mechanical presses have certain regulations by OSHA and ANSI, and press brakes have certain regulations by OSHA and ANSI and other kind of supportive documents.

Typically a mechanical power press is probably going to be used for more drawing operations and punching operations and shearing operations, perhaps longer production runs whereas -- and maybe more two- and three-dimensional kinds of changes of shapes and metals whereas a press brake mostly for bending operations or folding operations.

Usually it has a working surface that's long and narrow whereas a mechanical power press, the working area may be as deep as it is long. Press brakes may be used for shorter production runs perhaps.

Q. It has been represented by different experts that have been retained by the defendant in this case that mechanical presses and press brakes are two different entities; do you agree with that statement?

MR. ROBINSON: Let me object to the form of the question, your introductory statement of what the witnesses have indicated.

THE WITNESS: Yeah, I don't know what other people have indicated. They are -- they do have different codes. They do have different code requirements. There have different supportive documents. They can overlap in making the same part. They could be used in many operations to produce the exact same part, and you couldn't tell if it was made on a mechanical press or press brake.

But press brakes do have certain functional characteristics that are unique to them. For example, a lot of times in a press brake you are making a bend or a fold in a piece of metal where that piece of metal is significantly going to be outside of the point of operation. You do not traditionally see that with a mechanical power press. But, again, you could in certain operations make the same part on both pieces of equipment and you couldn't tell the difference which machine it was made by.

BY MR. HARTMAN:

Q. Would you agree that substantial differences exist between press brakes and punch presses?

MR. ROBINSON: I will object to the form of the question.

THE WITNESS: I would say that functionally they overlap but they do have some things, some characteristics that are more predominant with one than with the other.

BY MR. HARTMAN:

Q. And what are the characteristics that are more predominant with one than the other?

MR. ROBINSON: Objection, asked and answered.

THE WITNESS: I have already listed those. For example, typically longer production runs are with, I would say with mechanical presses. More folding operations, especially long folding, bending operations are more traditionally done with press brakes. Larger pieces that need to be bent where they stick outside of the point of operation can be done on a press brake, typically are not done on mechanical power presses although under certain circumstances they possibly could be done.

BY MR. HARTMAN:

Q. Do press brakes have full revolution cycles?

A. Both mechanical presses and press brakes can be full revolution or part revolution devices.

Q. In 1978 are you aware of any full revolution press brakes?

A. I don't know. I wouldn't be surprised if there were. I didn't check to see if there were or weren't. I wouldn't be surprised if there were full and part revolution press brakes at the time this machine was made.

Q. Prior to coming here for your deposition today did you have the opportunity to discuss your testimony with Mr. Robinson?

MR. ROBINSON: Object to the form of the question.

THE WITNESS: Yes, briefly.

BY MR. HARTMAN:

Q. What time did you meet Mr. Robinson this morning?

A. About a little after 7:00.

Q. Did you meet Mr. Robinson last night?

A. No.

Q. Have you met Mr. Robinson since the taking of Professor Barnett's deposition?
A. Well, this morning.
Q. Other than this morning have you talked to Mr. Robinson since the taking of Mr. Barnett's -- Professor Barnett's deposition?
A. No.
Q. Have you had the opportunity to review Professor Barnett's deposition testimony?
A. No, I have not.
Q. Have you had the opportunity to review Mr. Switalski's deposition testimony?
A. No, I have not.
Q. What did you and Mr. Robinson talk about at 7:00 o'clock this morning?
A. We talked about his flight in, what time you guys were going to leave. I asked him how long the depositions had gone for my own scheduling purposes.
He mentioned that there were several significant changes in Professor Barnett's deposition compared to his report, that there were some mistakes in the prior report about -- I think about whether or not foot controls were or were not

allowed by standards.

I think we talked about the fact that he never mentioned in his report that the door on a foot pedal -- I think he is now taking the position, the unique position that there should be a door on the foot pedal or foot control for a press brake and that that would not be required on a mechanical power press.

I think he mentioned the fact that Ralph Barnett agrees that if the proper point-of-operation guarding had been provided on this press that this accident would not have happened.

I think those kinds of things.

Q. Anything else?

A. Oh, I think those are the subject areas.

Q. You worked with Professor Barnett at Triodyne for quite some while; am I correct?

A. I worked with Professor -- well, I worked for a company that he owned called Triodyne, Inc. Then I worked for a company that he also was a part owner called Triodyne Taussig; and then I was his partner for several years in a company that he, myself and another gentleman, Carl Uzgaris, were

all shareholders called Triodyne Environmental Engineering, Incorporated.

Q. During your years -- and I am going to use all three and just call it Triodyne. Do you have any problem with me referring to the three entities as Triodyne?

A. Not at the current moment. I guess if something comes up --

Q. You will let me know?

A. I will try to.

Q. During your period working at Triodyne, did you have the occasion to evaluate foot control usage in conjunction with press brakes?

MR. ROBINSON: Object to the form of the question.

THE WITNESS: Yes.

BY MR. HARTMAN:

Q. Can you tell me what your involvement was?

A. Primarily through some activity with the company, the firm, primarily through Professor Barnett, had defended several foot control manufacturers and had defended several press brake manufacturers and several press manufacturers. And my office was immediately adjacent to the

conference room, and Dr. Barnett would quite often be debriefed there and explain his theories to either the project engineer or the client and just by being in close proximity would hear those things.

There was some activity within the office on those kinds of devices and equipment. There were several publications that came out of that firm having to do with philosophies associated with that kind of equipment, general safety philosophy or tests or observations, theories that had been generated about that equipment.

I also was a member of the National Safety Council during those years and still am a member of the National Safety Council, the committee that's responsible for that kind of equipment, both presses and mechanical presses, hydraulic presses and press brakes in addition to a lot of other metal working equipment.

And I was on two ANSI committees having to do with B-11 equipment, one having to do with ergonomics or human factors of that general category of equipment and another one having to do with more production, missed control kinds of

problems associated with that kind of equipment.

Q. Did you ever work with Professor Barnett on a case where it was alleged that the foot control caused an accident on a press brake?

A. That's really testing my memory. I wouldn't be surprised that I did; but as I sit here today, I can't specifically say there was a case of A versus B that specifically had to do with that issue.

Q. So today you have no recollection as to whether you did or did not work with Professor Barnett on a case where someone was injured on a press brake and they alleged that the foot control was defective?

A. Yeah, I can't remember a case caption, that's correct.

Q. Can you remember a case?

A. I remember there being discussions about those issues. I remember hearing those and hearing counterarguments and discussions and the circumstances surrounding cases. I can't distinguish as I sit here if those were matters that I was actually participating in or as a project engineer or assisting Ralph or if it was

just the fact that I was called into the room to be supportive in discussing things or the fact that my office was immediately adjacent to the conference room and these kind of discussions were usually quite boisterous and be filling your room with all of the discussion.

Q. Today do you have a specific recollection as to whether or not you worked with Professor Barnett on a case where it was alleged the foot control caused an accident with the press brake?

A. I don't -- as I said, I don't have a recollection of any case, specific case that I did that on.

Q. Do you have a factual scenario in your mind where it seems that you recall having worked with him on a case where it was alleged the foot control caused an accident on a press brake?

A. Do I have a factual basis, is that what you just said?

Q. Factual scenario in your mind, a mental picture of working on a case with Professor Barnett where it was alleged the foot control caused an accident with a press brake?

A. I don't remember one as I sit here.

Q. Do you recall working with Professor Barnett on a factual scenario where it was alleged the foot control caused an accident on a punch press?

A. I don't remember one way or the other.

Q. Have you ever testified in any case where it was alleged that the foot control caused an accident with a press brake?

A. I know I had a press case. I think it was a mechanical press.

Q. A mechanical press would be a punch press, what we call --

A. Well, you know, what you call a punch press and someone else calls a punch press may be different things. I try to use the term mechanical power press or mechanical press and press brake.

Q. What does when you just say press because several times you say press and then press brake. What does just the term press mean?

A. If I said that, I should go back and clarify. Typically I am trying to talk about power presses and press brakes and typically I think for some reason mechanical power presses have been brought up in this case although the accident

didn't involve a mechanical power press. But those I see are two overlapping categories of machinery.

Q. Well, how do we -- what is the press that we are talking about that is not a press brake?

A. Well, there have been a lot of presses that have been talked about in this case. I think probably the ones that have been talked about the most are mechanical power presses.

Q. And does a mechanical power press include press brakes?

A. No.

Q. So mechanical power press is one type of press; a press brake is another type of press, correct?

A. Yeah, but some of their functions overlap.

Q. I understand what you are saying but I am trying to distinguish for clarity of the record when you say mechanical power press, you are not including in that category a press brake?

A. That's correct.

Q. And a press brake is different than a mechanical power press when you talk?

MR. ROBINSON: Let me object to the form of the question, also asked and answered repeatedly.

BY MR. HARTMAN:

Q. Am I correct?

A. It is different although some of their functions overlap.

Q. And some of their functions don't overlap; am I correct?

A. That's correct.

Q. Now, you indicated that Mr. Switalski was -- when you left Professor Barnett, was it on good terms?

A. I think so, yes.

Q. Okay. Do you two still have a professional relationship?

A. I don't know when you say a professional relationship. For some reason he and I probably really haven't communicated in the last five or six years. I know his company has been under a lot of stress. A lot of people have left and that may be part of it. He no longer has an engineering company. But I would say that we are -- you know, I occasionally use their library. I don't think we are at odds with each other.

Q. Did you leave -- what was the reason for your leaving Triodyne?

A. There were several reasons. One was I was in a three-way partnership. I knew what Ralph Barnett was contributing to that partnership. I knew what I was contributing to that partnership, and the third person really wasn't contributing anything to the partnership. And that was part of the breakdown.

The company, the companies and that company had gotten to a point in their development where there needed to be some line of succession, some people starting to take over some of the reins of controls and Dr. or Professor Barnett is a very powerful personality. And I don't think he really wanted to give more authority and responsibility to individuals who were very entrepreneurial. So a lot of people left to start their own firms.

It was a good time in my life to be more independent of another firm, another entity. And it just made sense to do it at that point in time.

Q. I have to ask these because there has been a long history, and I don't want to be surprised by anything that Mr. Robinson might ask you. I am not trying to get involved about your relationship with Mr. Barnett. I am not trying to get personal with

you. I apologize if I am getting into personal areas.

Was any part of your leaving because of a difference in the way you saw your roles as experts in cases?

A. I, in my very early years at Triodyne, did some work with Ralph Barnett where I was maybe what I would characterize as the project engineer. Typically the way things worked at Triodyne was an engineer would workup a case and debrief Ralph Barnett on the particulars and then he would testify, go to trial, give depositions, those kind of things.

But that only lasted in my career probably the first few years and after that it would be rare that he and I would work collaterally on the same case unless we were both identified as experts. So, I really didn't have that kind of working relationship with him probably for 80 percent of the time I was there, 90 percent of the time I was there.

Q. Do you have an opinion as to his objectiveness in evaluating cases based on your experience and exposure to Professor Barnett?

MR. ROBINSON: Objection to the form.

THE WITNESS: Can you explain what you mean by that?

BY MR. HARTMAN:

Q. Have you ever seen Professor Barnett change his testimony based on the client's wishes?

A. I don't know that he ever changed his opinion. Sometimes he seemed to be an advocate for a position that would I think would be inconsistent with other positions he may have taken or things that he may have published.

For example, in this case I think he is advocating positions that are 180 degrees out of phase with things that he has published and promoted over the years, quite often published as part of a series of safety briefs.

So he may be advocating positions that are inconsistent with my position or may have advocated positions I think might be inconsistent with things he has published. I don't know that he has changed his testimony or position based on a client's request.

Q. So the two of you have had differences on the opinion you reached and that would be the

extent of your disagreement on how an opinion should be reached on a case?

MR. ROBINSON: I will object to the form of the question.

THE WITNESS: I don't think we ever had a project where we were both identified as experts and I would have an opinion that would be at odds with his or he would have an opinion that would be at odds with mine.

There might have been situations where I was a project engineer and I would have come up with Opinions 1, 2 and 3 and that would have been all the opinions I would have felt comfortable with and he might have come up with Opinions 4, 5 and 6.

BY MR. HARTMAN:

Q. Are you aware of any case that Professor Barnett gave testimony in on behalf of a machine manufacturer where he gave testimony as to whether or not a foot control caused or contributed to an accident?

A. I know that those cases were in the office. I know that the company when we would do a case conflict check could not take cases against certain press manufacturers, whether they be press

brake or mechanical or hydraulic power presses. I know we couldn't take cases against certain foot pedal control actuating devices because they had been our clients. And I know we had defended them in a lot of situations, we, as a company. I guess that's the best I can answer that.

Q. Well, Professor Barnett makes a distinction between mechanical power presses and press brakes; are you aware of that?

A. He doesn't always make that distinction. I mean for this particular case I think I just learned because of his deposition that he is now taking some unique position about the appropriateness of certain kinds of foot controls on press brakes versus mechanical power presses. I am aware of that unique and new position that he has taken.

Q. I am sorry. I thought I asked you earlier if you had reviewed his deposition and you indicated not.

A. I hadn't. This is just my understanding.

Q. And how did you reach that understanding?

A. You asked me before what the attorney and I had talked about this morning and that was one of

the issues that we talked about.

Q. So in your mind do you know specifically whether any of the -- do you have a specific recollection today of a case that Professor Barnett had discussed in your presence where it was alleged that a foot control caused an accident on a press brake?

A. I believe that when I was in my office at Triodyne I probably heard discussions about that but I don't remember the case name, the particulars of the accident, the particulars of the injury, what product was being made on either the press brake or mechanical power press but I remember discussions about those issues.

Q. In conjunction with press brakes?

A. Either/or -- either and/or press brakes or presses, mechanical or hydraulic presses.

Q. Is there a distinction in your mind between evaluating the foot control usage on a power press, mechanical power press versus the use of a foot control on a press brake?

MR. ROBINSON: Object to the form.

THE WITNESS: You mean the press brake involved in this accident or the universe of press brakes?

BY MR. HARTMAN:

Q. Well, let's just go universe first.

A. Well, I think it is very difficult to make some kind of profound statement about the universe of press brakes and the universe of mechanical power presses.

But if we look at this press brake, if we look at the part that's being made and the process being worked on, this press brake is almost being used as a mechanical power press.

It is a small piece that's being worked on. The employer is not using point-of-operation safeguarding. There is a hands-in-dyes allowance by this employer that the employee is using.

So even though it is a press brake, in many ways it is being used very similar to the production that might be run off of a mechanical power press. But it is a press brake and probably should be evaluated based on press brake standards and criteria.

Now, as far as foot controls, it is my belief that there is nothing in the literature that says a foot pedal of the type that was sold by Heim or was involved in this accident would be

inappropriate, unreasonably dangerous, which should be outlawed.

And if you look at the philosophy associated with safeguard devices, there is nothing that says a foot pedal would require in this particular case a front door on it or any other kind of inhibiting device on the front of the foot pedal. So I believe that the foot control that was used on this Heim press was reasonably safe for its reasonably foreseeable use.

Q. What does reasonably foreseeable mean to you? When you use that term, what does it mean?

A. Well, I think from a general standpoint foreseeability means that there is something that you can predict and have some capability of controlling what you are predicting.

So it is foreseeable, for example, that a meteor will strike the earth but you really can't do much about it because you don't know when and where and how big or anything else about it.

It is not foreseeable that someone is going to use a coke bottle as an automobile. Certain things it just -- they just don't make sense that one would be used for this kind of

thing. So those are some of the boundaries about foreseeability.

I think in this case it is reasonable to expect that parts will be bent and shaped in a press brake. I think it is reasonable to expect that the employer will provide the dyes and provide safeguarding at the point of operation, that the employer will provide supervision and training for their employees, that they will apply administrative controls to safeguard those people and that if a particular foot switch were needed that had some unique, unusual characteristics to it, that the employer, the people responsible for that production operation would probably be in the best position to make that decision.

Q. What does reasonably foreseeable mean to you when you use that in a report evaluating a product?

MR. ROBINSON: Objection, asked and answered.

THE WITNESS: I think it means where you have some predictability associated with things and you have some ability to control that predictability.

BY MR. HARTMAN:

Q. For it to be reasonably foreseeable you

need predictability and the ability to control it; am I correct?

A. Or do something about it or modify it, yes, I think so. You know in a general universal sense, yes.

Q. When evaluating foot control usage with a press brake, would you analyze a foot control usage with a press brake or would you utilize foot control usage with power presses as well in making your analysis?

MR. ROBINSON: Object to your form.

THE WITNESS: Are you talking about me making the analysis? Who would be making this analysis?

BY MR. HARTMAN:

Q. Your analysis.

A. My analysis just as an outside consultant?

Q. Yes -- well, let's talk about as an outside consultant you are retained to analyze the facts and circumstances of this case; am I correct?

A. Yes.

I think what I would do if I were asked what kind of foot control should be on a press brake, I would first go look at the codes and standards. And OSHA and ANSI embrace, allow,

endorse, encourage, publish the acceptability of having the foot control as was there as of the time Heim sent it out and was there at the time of the accident. Those are all considered to be acceptable whether it would be a mechanical power press or a press brake.

Then I would go and look at what competitors are doing. And if you look at the competitive literature, the documentation, articles about foot controls, both the literature and what competitors have been doing and continue to do to this date are to provide foot controls that typically do not have a door on the front.

I would then go to the manufacturers of foot controls and look at their catalogs and see if they make any kind of prohibition saying you should only use a foot control with a door on the front here. You should never use it there.

I have done those things. It seems to me that all of those resources say that the foot control, as it was sold by Heim and at the time this accident occurred, would be considered to be reasonably safe.

Q. Thank you but you haven't answered my

question, sir.

My question is in evaluating the foot control that is to be placed on a press brake, do you analyze the foot controls that are actually with the press brake or would you also look at the foot control's interaction with mechanical power presses?

MR. ROBINSON: Excuse me one second.

Objection to the form. Asked and answered and argumentative.

THE WITNESS: I don't think you were listening --

BY MR. HARTMAN:

Q. I listen well.

A. Well, then I maybe need to re-emphasize it. I said I would look at both. In fact I would look at all kinds of machinery that have foot controls on them to see if there is some unique, special foot control configuration or feature that would be acceptable.

But my basic and primary resource would not be comparing press brakes to mechanical power presses. It would be looking at what's allowed, what's endorsed, what's encouraged, what's

approved, what's become the custom and practice. And all of those based on the literature, based on manufacturers would be the kind of foot control in place again when this was sold and at the time of the accident.

BY MR. HARTMAN:

Q. In 1978 were any of Heim's competitors providing gated foot controls with their press brakes?

A. I haven't seen any literature that shows that as any kind of standard feature. I would imagine that in '78 a purchaser of a press brake or any device that used a foot control could have gone to the manufacturers of foot controls and had them configured with front doors, flaps, other switches, other devices on them. But I don't remember seeing any literature indicating that that was the custom and practice or standard by any manufacturer in this country.

Q. Well, as -- do you consider yourself a safety engineer in evaluating machine products?

A. Yes.

Q. Okay. As a safety engineer would you agree that notwithstanding the custom and practice

and what the codes permit, if you have a way that will protect an operator of a machine, you should incorporate that method?

MR. ROBINSON: Let me object to the form of the question, specifically the breadth.

THE WITNESS: Yeah, I don't understand what you mean.

BY MR. HARTMAN:

Q. You don't understand the question that if as a safety engineer notwithstanding the fact that the machine complies with the applicable codes --

A. Uh-huh.

Q. -- and that it is built in line with the custom and practice of other machine manufacturers --

A. Uh-huh.

Q. -- that if you knew of a safety device that would protect operators, would you include that safety device on a machine?

MR. ROBINSON: Same objection.

THE WITNESS: I would say, no, and I need to explain that.

I mean the example would be automobiles. I use that as an example. There are automobiles that

have every safety feature and device on it that cost upward of 50, $60,000. There are cars that are sold in this country that cost $15,000 that don't have all of those features.

The $15,000 car with not every safety feature, whistle and bell on it is considered to be reasonably safe. And I as a safety engineer working for an automobile company would not say you have to make every new car with every advanced safety feature possible on it. That would be unreasonable, traditionally not what's done.

And actually, if you look at some of the safety philosophy out there, there are three things that a design has to be. It has to be functional. It has to be reasonably safe, and it has to have a component of cost associated with it that comes out of the welfare of society. So it would actually be a violation of the code of ethics to mandate that every possible safety feature be put on every machine or every product out there.

BY MR. HARTMAN:

Q. Would -- in your analysis would you evaluate the cost of the safety feature in conjunction with the cost of the machine to make a

determination as to whether or not you would include that safety feature?

A. You would look at -- the very first things you would look at would be the codes and standards and criteria there are. If there were no such things and you were in a void, it is a brand new product, as a designer you would look at the functionality. You would look at the reasonable safetiness of the product, and you would look at a cost component that comes out of the idea of welfare. So you wouldn't look at the cost exclusively by itself.

So, for example, on this machine there is a well-documented accident scenario that occurs on all equipment that uses foot controls of people riding the pedal and putting a door on a front flap or a door on these foot controls encourages people to ride the pedal.

So, again, going back to these three basic tenets of design, adding that door causes a new hazard, a new accident scenario that may be reason to disqualify using it.

Q. Have you written any articles that discuss the issue of the gated foot control increasing the

probability or likelihood of riding the pedal?

A. I don't know that I ever have.

Q. What articles have you read that discuss that phenomenon?

A. There are some OSHA articles. There is an article by a guy from NIOSH, Etherton. I think is his name.

Q. Would you tell me the name of that article, please?

A. Sure. It is called Machine-Cycling Errors With Foot Switches and Repetitive Tasks.

Q. Do you have that article with you?

A. Sure, I have an abstract and the entire article.

Q. I would like to mark that as Exhibit 1, please.

A. They are not stapled together. Do you want them as one?

Q. The abstract and the article, we will call them both one.

A. Do you have a stapler or something so they won't walk away from each other?

And that concept of riding the pedal is discussed in, I believe, National Safety Council

publications, OSHA publications, other publications about the use of foot controls of this type with a flap on the front.

Q. Do you consider the OSHA publications that discuss riding the pedal to be authoritative?

MR. ROBINSON: Object to the form of the question.

THE WITNESS: I have been involved in safety enough and have taken courses in epidemiology, for example, that what you generally should not do is just look at one unique article all by itself and base everything on that one article.

Typically you look at the community of articles, the community of standards, how long they have been around, those kinds of things; and they become more powerful. Certainly if there is only one article, there is only one test that's ever been performed and that's what you are stuck with, then it winds up that's the only thing you have.

In this case I think the body of literature supports the concept that foot controls that have doors on the front or flaps on the front, that they inhibit or make it more difficult to get the people to get their foot in and out and because of that

typically once they get their foot in, they leave it in.

Especially if it is a process where there is a repeated need to cycle the piece of equipment whether it is a saw, a press or press brake, mechanical press or press brake. And that is okay if there is adequate and complete point-of-operation safeguarding or if there is kind of a Hands Out of Dye philosophy that can be enforced and embraced and supervised and maintained.

But quite often there appears to be a series of accident scenarios where people are riding the foot pedal and because of that they inadvertently actuate it at the wrong time and either cause damage to the machine, the dye or to themselves.

BY MR. HARTMAN:

Q. Are you aware of any article that specifically discusses the ease of access to the foot pedal as being a contributing factor to riding the pedal?

A. Well, I think among these they talk about that. I don't know if they say it as clearly as that. That's the implication to me.

I think one of the ones that talks about that most pointedly in this case happens to come from a Triodyne safety brief where they talk about these foot pedals having the doors, that one of the accident scenarios associated with that is the operator riding the pedal.

But I believe some of these other articles if they don't come out and say it that pointedly, I mean it is the obvious conclusion that that's what they are saying.

Q. Obvious to who?

A. Obvious to anyone who is trained and experienced on safety and reading technical articles.

Q. So it is obvious to you?

MR. ROBINSON: Object to the form, argumentative. You just ignored his answer.

THE WITNESS: I think it is obvious to me. I think it is obvious to any safety practitioner. I think it is obvious to anyone who's been around this kind of equipment.

I used to work in the automobile industry and would go to plants where they would use presses and press brakes and other devices that used foot

controls. And I have seen people where there is a flap on the front riding the pedal.

It just -- it was obvious to me that part of the reason is the need to get in and out is -- would be -- if you took your foot out each time, it would be so often that it would cut down on your productivity and probably cause some kind of fatigue or maybe even illness with your foot doing that repeatedly or problem with your foot.

BY MR. HARTMAN:

Q. What type of gated foot control did you see in these plants?

A. Typically the kind we have been talking about here, a foot control of about the same geometry, about the same design, just with a flap on the front.

Q. Well, is there a difference between the mouse trap flap and the top level swivel flap?

MR. ROBINSON: Object to the form of the question.

THE WITNESS: Well, the fact that you say -- that you said one is this and one is that, yes, there is a difference. But as far as it inhibiting your ability to get your foot in there and being an

incentive for someone to ride it, no, I don't think there is a difference.

BY MR. HARTMAN:

Q. Is there a difference in the ease by which you can defeat the gate on the foot control between a bottom-hinged foot control and a top-hinged foot control?

A. No, you can usually defeat it by putting a piece of wood or a piece of tape or anything else like that in either case.

Q. Would you agree that if you defeat the foot -- the gate part of the foot control that you are basically using the foot control in a manner that it is not intended?

MR. ROBINSON: Object to the form of the question.

THE WITNESS: Well, you are using the foot control, the foot control feature in the way it was intended. You are just not using this device that in some ways inhibits your foot, under many cases inhibits your foot going into it. But I think if someone had designed safety based on that, then you would be avoiding that.

But a lot of times these foot controls are

chosen just because they are available from the parts room. They may have been -- a lot of these foot controls have a universal feature where they can be moved from machine to machine to machine. So if that particular foot control is broken, they may go to the parts crib and get another foot control that's on a shelf that does or doesn't have a front door on it.

BY MR. HARTMAN:

Q. I understand that but if it has a gated foot control -- if it is a gated foot control, the manufacturer intends for the gate to be utilized; am I correct?

MR. ROBINSON: I will object to the form of that question.

THE WITNESS: If it is gated they intended there to be a gate there. Whether it is to be utilized is really the responsibility of the people responsible for the workplace, typically the employer. They know for this worker, for this task that it is important that that foot control be open, be guarded, be big, be small, be in a certain location, be anchored, be movable.

It is their responsibility to make those

choices, to select what they think is appropriate for their work environment, to anchor them or not anchor them, to make them function one way or another way. That's their responsibility.

BY MR. HARTMAN:

Q. Am I correct that Linemaster does not make recommendations as to what foot control should be purchased from it to manufacturers of press brakes?

MR. ROBINSON: Object to the form.

THE WITNESS: Yes, I believe that's correct. And I believe that's because there is no government requirement. There is no ANSI requirement. There has been no research. There has been no custom and practice establishing that a particular foot control is better or superior whether it is for a press brake or a mechanical power press.

BY MR. HARTMAN:

Q. But Linemaster does not recommend foot controls to its customers; am I correct?

A. They do not recommend -- they have a line of foot controls. They do not say a power press should only use this kind of foot control and not that kind of foot control whether it is a press brake or a power press or a table saw or any kind